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Tripartite Labor Disputes in the Airline Industry

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TRIPARTITE LABOR DISPUTES IN THE AIRLINE INDUSTRY

The Railway Labor Act[1] (RLA), the first successful attempt to establish machinery to control labor relations in the railroad industry,[2] also applies to the airline industry. Under the act, a variety of specialized procedures has been developed to settle labor disputes in these two industries, which have been treated separately from other industries because of their intimate connection with interstate commerce.[3] Congress felt that the prevention of harmful work stoppages in industries providing interstate transportation of passengers and freight was crucial to the national well-being.[4] There are, however, some structural differences in the machinery created by the RLA to handle labor disputes in the railroad and in the airline industries.[5] The significant difference is the existence of a national, industry-wide railroad board for handling contract-interpretation disputes, a board which has no single counterpart in the airline industry.[6] The absence of such a national board for interpreting contracts in the airline industry has resulted in the RLA's inability to accomplish its purposes in all cases, an inability which has resulted in several labor disputes leading to work stoppage. The type of dispute which to date has placed the greatest strain on RLA procedures is the crew-complement controversy which has raged between the pilots' union and the flight engineers' union. Each group wants the airplane-cabin crew to include a man who is trained in its skill. The unions bargain with the carriers for such a clause and the carriers, under threat of strike, usually include the desired clause in each union's contract. The presently existing statutory machinery cannot resolve the resulting three party dispute adequately. This comment will consider how and why the present system has failed to provide a method for settling such airline disputes, the ramifications of this failure for the airline industry, and what might be done to remedy the situation. To view this failure in perspective, it is necessary to consider the nature of those disputes specifically involved and the significance of the differences between the procedures for settling such disputes under the RLA.

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[1] 45 U.S.C. §§ 151-63, 181-88 (1964).

[2] Early legislative attempts to control railroad labor problems established voluntary procedures, and the decisions of the administrative bodies created by such legislation were merely advisory. For a complete treatment of early railroad labor legislation, see L. Lecht, Experience Under Railway Labor Legislation (1955); Garrison, The National Railroad Adjustment Board: A Unique Administrative Agency, 46 Yale L.J. 567 (1937).

[3] See International Ass'n of Machinists v. Central Airlines, Inc., 295 F.2d 209, 215 (5th Cir.), rev'd on other grounds, 372 U.S. 682 (1961).

[4] The RLA was enacted with the expressed purpose of "avoid[ing] any interruption to commerce or to the operation of any carrier engaged therein." RLA § 2, 45 U.S.C. § 151a (1964).

[5] Compare RLA § 3, 45 U.S.C. § 153 (1964), with RLA § 204, 45 U.S.C. § 184 (1964).

[6] RLA § 204, 45 U.S.C. § 184 (1964).

I. Classification of Disputes Under RLA

The various disputes the RLA was intended to handle are classified by the Act into three categories: representational, major, and minor.[7] Classification depends upon the cause of the dispute.[8] Representational disputes are those involving two unions, both of which are seeking recognition as the sole bargaining agent for employees currently holding a position.[9] When a representational dispute occurs in either the railroad or airline industry, the National Mediation Board is authorized by the Act to settle the matter by investigating the dispute and conducting a secret ballot of the employees involved.[10] This procedure is intended conclusively to determine which union will represent the workers in question.[11]

"Major" disputes are: those arising in the initial negotiation of a collective-bargaining agreement between a union and a carrier; controversies over matters not covered by an existing agreement; and disputes involving attempts to change an existing agreement.[12] In all "major" disputes the parties are attempting to acquire new rights and not to enforce existing rights.[13] The first step in the procedure for handling "major" disputes is private negotiation between the parties.[14] If the dispute remains unresolved, it goes to mediation under the supervision of the National Mediation Board.[15] If mediation fails, the Mediation Board endeavors to have the parties submit to voluntary arbitration.[16] As a last resort, the President may intervene and set up an emergency board to investigate and report on the dispute. The findings of this emergency board are not binding. The creation of such a board, however, is accompanied by an automatic cooling-off period.[17] These mediation and arbitration procedures have been created to facilitate agreement without actual compulsion to settle. When the statutory procedures are unable to resolve the "major" dispute, a strike usually results; however, during recent railroad disputes, Congress, because of the importance of the industry to the national interest, enacted special legislation requiring compulsory settlement of those disputes.[18]

"Minor" disputes are those relating to the interpretation of existing agreements and grievances arising from the application of these agreements.[19] These disputes involve the assertion of rights accrued under a contract.[20] Be-

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[7] See id. §§ 2, Ninth, 3, 6, 45 U.S.C. §§ 152, Ninth, 153, 156 (1964). See also 27 National Mediation Board Ann. Rep. 4 (1961).

[8] 27 National Mediation Board Ann. Rep. 4 (1961).

[9] Id.

[10] RLA §§ 2, Ninth, 201, 45 U.S.C. §§ 152, Ninth, 181 (1964).

[11] Id.

[12] Elgin J. & E. Ry. v. Burley, 325 U.S. 711, 723 (1945), aff'd on rehearing, 327 U.S. 661 (1946).

[13] Id.

[14] RLA § 2, Second, 45 U.S.C. § 152, Second (1964).

[15] Id. § 5, First, 45 U.S.C. § 155, First.

[16] Id.

[17] Id. § 10, 45 U.S.C. § 160. The cooling-off period is a thirty-day interim during which neither party may make any change in the situation. Id.

[18] Pub. L. No. 88-108, 77 Stat. 132 (1963).

[19] Elgin J. & E. Ry. v. Burley, 325 U.S. 711, 723 (1945).

[20] Id.

cause of the great number of such disturbances and their relatively minor character, the RLA provided machinery to settle "minor" disputes which is far different from that provided for "major" disputes."[21] Private negotiation between the parties is the first step toward resolution of minor disputes.[22] If such negotiation fails, either party, or both, may apply to an adjustment board, on which the union and the carrier are equally represented, to resolve the dispute.[23] This board holds a hearing and attempts to resolve the dispute by vote; however, the even distribution in board membership between labor and management frequently causes deadlocks.[24] In case of such a deadlock, the board members choose a neutral party as "referee." If they cannot agree to one, the National Mediation Board is empowered to appoint a neutral referee to the board so that the dispute will finally be resolved.[25] These adjustment board procedures were intended by Congress to resolve all "minor" disputes without strikes, thus limiting the use of strikes to "major" disputes.[26]

This procedure for settling "minor" disputes has worked well for the settlement of most such disputes.[27] The important exception, however, has been tripartite disputes over work assignment—disputes in which more than one union is seeking to have its existing membership selected to fill a position or group of positions.[28]

II. Tripartite Work-Assigment Disputes Under RLA

The work-assignment dispute is a recent development in labor relations. The most frequent cause of a work-assignment dispute is replacement of workers caused by technological change. As multioperation machines are developed which are able to perform, in one operation, functions previously accomplished in two operations by members of different unions, only one job may remain where previously there had been two.[29] When this occurs, the unions which previously represented workers in their separate positions may be

21 At the time of passage of the act, the number of "minor" disputes, those involving contract interpretations and grievances, had reached major proportions, and a railroad crisis was imminent. The RLA procedures were created to resolve these disputes and, at the same time, to get "minor" disputes out of the way of the settling of "major" disputes by the Mediation Board. Id. at 726.

22 RLA § 2, Second, 45 U.S.C. § 152, Second (1964).

23 Id. §§ 3, First (a), (i), 204, 45 U.S.C. §§ 153, (a), (i), 184.

24 1 K. Davis, Administrative Law § 8.11, at 562 (1958).

25 RLA § 3, First (1), 45 U.S.C. § 153, First (1) (1964).

26 See Elgin J. & E. Ry. v. Burley, 325 U.S. 711, 726 n.22 (1945).

27 See 27 National Mediation Board Ann. Rep. 86 (1961).

28 Carey v. Westinghouse Elec. Corp., 375 U.S. 261, 263-66 (1964). These disputes have been called jurisdictional disputes because the extent of the authority of two unions is involved, but should not be confused with representational disputes which are also categorized as jurisdictional. Although both types of disputes are referred to by the same terminology, work-assignment disputes involve two conflicting union claims against the employer (tripartite), while representational disputes involve a direct conflict between two unions, and any effect on the employer is incidental.

29 See Transportation-Communication Employees Union v. Union Pac. R.R., 385 U.S. 157 (1966). Infrequently, work-assignment disputes are caused by unions seeking to increase the number of jobs available to their members at the expense of another union. This conflict between unions may take a variety of forms, such as a dispute over the qualifications for a position, but the instigating union's purpose is usually to increase employment opportunities for its members.

placed into conflict over whose members will fill the single remaining positions, especially when the number of jobs created by the new machine does not absorb all the displaced workers. The continued rapid expansion in the airline industry, a characteristic of a new industry, created such high demand for personnel that it more than compensated for employment reductions caused by technological advances.[30] As the industry approaches its optimum size, although the number of persons employed continues to increase, the employment growth *rate* is slowing down. This has resulted from reduction in employment requirements caused by advancing technology, the effect of which has not been completely compensated for by the continued expansion of the industry.[31] The effects of technology upon employment are much less evident in the airline industry than they are in the older railroad industry, where technological advances have been the major factor in the reduction of the size of the work force by half since 1947.[32] Since the RLA was drafted many years before the effects of technological advances became pronounced, there was no provision in the statute for the three-party work-assignment disputes which are often caused by such advances. Instead, the RLA procedures were all written in terms of two-party disputes.[33]

Despite the lack of specific provisions in the RLA, a definite procedure has been established for railroad work-assignment disputes through an evolution in the interpretation of the statute by the courts. Since work-assignment disputes involve contract rights and are therefore classified as "minor," the courts have forced the adjustment boards to be the vehicles for the statutory evolution. In the railroad industry, the adjustment board is a single body, national in scope, with membership on the board selected by all the carriers and national unions.[34] In spite of a rather inauspicious beginning, the evolution of the National Railroad Adjustment Board's functions in the area of work-assignment disputes has brought the Board to the point where it is now required to resolve such disputes between the three parties.[35]

The RLA provides that all "involoved" parties to a dispute must receive notice of the adjustment board proceeding.[36] The notice requirement was written into the law in order to protect the interests of all parties who might be affected by a given hearing[37] and to avoid a multiplicity of hearings arising out of the same situation. The unions felt, however, that the interests of their

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[30] Bureau of Labor Statistics, Technological Trends in Major American Industries 219 (1966).

[31] "Between 1947 and 1957, employment in air transportation grew at a compounded average annual rate of 6.2 percent, rising from 82,000 workers to over 148,000. In the 1957-64 period, the growth rate slowed to 3.7 percent annually, reflecting the impact of advancing technology." Id.

[32] Id. at 202.

[33] E.g., RLA §§ 7, Second (a), 201, 45 U.S.C. §§ 157, Second (a), 181 (1964).

[34] Id. § 3, First (a), 45 U.S.C. § 153, First (a).

[35] Transportation-Communication Employees Union v. Union Pac. R.R., 385 U.S. 157, 165 (1966).

[36] RLA § 3, First (j), 45 U.S.C. § 153, First (j) (1964).

[37] Townsend v. NLRB, 117 F. Supp. 654 (N.D. Ill. 1954). One of the original purposes of the notice requirement was to benefit individual employees in disputes over such matters as seniority. See Estes v. Union Terminal Co., 89 F.2d 768 (5th Cir. 1937).

members were better served if they did not participate in a tripartite hearing. Each union preferred to take its contract to the National Railroad Adjustment Board for an individual determination of whether, by the contract terms, the union should be entitled to the position. When both unions independently followed this course of action, it often resulted in separate determinations that each union was entitled to the same position.[38] Such results place the carrier in the awkward position of having to compensate two groups of employees for the same work.

The unions were able to accomplish this result because of the Board's composition and procedures. When one union presented its part of a work-assignment dispute, the carrier involved would petition for joinder or for notice to the other union involved. A vote would be taken on this petition, and the board would deadlock, all union members voting against joinder or notice and all carriers voting in favor.[39] As a result of the tie vote, the motion would be defeated.[40] Such tactics were successful in thwarting the carrier's attempts to adjudicate the entire dispute in one proceeding. As a result of the futility inherent in the use of this procedure in the early work-assignment cases, the Board did not even provide notice to both unions.[41] This failure of the Railroad Adjustment Board adequately to handle tripartite disputes left any possibility for change in the hands of the courts.

The courts did not approve of the Board's failure to give notice in work-assignment cases. In *Hunter v. Atchison T. & S.F. Ry.*,[42] the court chastised the Board for its consistent failure to give notice to the second union involved in a dispute. Other courts refused to enforce Board awards made without such notice.[43] Faced with this hostility towards its handling of work-assignment disputes, the Board modified its position and began to give notice to the second union. This notice alone proved insufficient to remedy the situation, for the union which received notice would send back a form reply disavowing any interest and declining to participate.[44]

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38 Under the terms of the contracts between the unions and the carrier, each union was entitled to the position. The Adjustment Board looked at each contract separately to determine the rights of the parties. With such a procedure, one contract would have no bearing on the rights of the parties under the other contract. Transportation-Communication Employees Union v. Union Pac. R.R., 385 U.S. 157, 160 (1966).

39 Northrup & Kahn, Railroad Grievance Machinery: A Critical Analysis, 5 Ind. & Lab. Rel. Rev. 365, 373 (1952). The other union would assent to the procedure and later bring a separate claim under its own contract with the carrier. In this second proceeding, the earlier decision would have no effect since the rights of the second union had not been involved.

40 The neutral referee could not vote on procedural matters. See Illinois Cent. R.R. v. Whitehouse, 212 F.2d 22, 27 (7th Cir. 1954), rev'd on other grounds, 349 U.S. 366 (1955).

41 See Whitehouse v. Illinois Cent. R.R., 349 U.S. 366, 372 (1955).

42 188 F.2d 294 (7th Cir.), cert. denied, 342 U.S. 819 (1951). "To say that members [of one union] are not involved in a dispute which may result in [members of the second union] supplanting them in their jobs is so unrealistic as to be absurd." Id. at 300-01.

43 E.g., Order of R.R. Telegraphers v. New Orleans T. & M. Ry., 229 F.2d 59 (8th Cir.), cert. denied, 350 U.S. 997 (1956).

44 This form reply was drafted by the Railway Labor Executives Association, which is composed of the leaders of various railway labor unions.

The Supreme Court finally resolved the entire matter by requiring that the Railroad Adjustment Board must not only give notice, but must resolve the tripartite dispute in one proceeding.[45] Furthermore, the Court held that the decision of the Railroad Adjustment Board was final regardless of whether the second union chose to participate.[46] By requiring the Board to adjudicate work-assignment disputes in one proceeding, the Court forced it to function in the same way that the National Labor Relations Board (NLRB) functions when faced with a similar problem, that is, by holding a hearing and then either awarding the position to one of the unions or splitting the positions between the unions.[47] This gradual development under the Railway Labor Act is consistent with the statutory purpose of preventing interruption to commerce, since it resolves work-assignment disputes without strikes.

In the airline industry, this evolution of adjustment board powers has not taken place. This is due to the difference between the composition of adjustment boards in that industry and the National Board which exists in the railroad industry. Unlike the railroad industry's single board, the airline industry has many adjustment boards, each created by the contract between a carrier and a single union.[48] A tripartite dispute cannot be decided by such a single-union board because one union comprises half of the board's membership, while the other union is not represented at all.[49] The Supreme Court decision on tripartite disputes in the railroad industry, requiring the National Railroad Adjustment Board to resolve the tripartite dispute in one proceeding can have little bearing on airline problems of the same nature because the single-union board is designed to handle only disputes between the single union and the employer. The absence of any airline adjustment board with more than one union represented means that there is no forum to resolve tripartite disputes in the airline industry.

The National Railroad Adjustment Board facilities are not applicable to the airline industry due to a provision of the RLA which specifically refuses to give it such jurisdiction.[50] Moreover, the NLRB, which resolves work-assignment disputes for other industries,[51] has no authority to settle disputes in the airline industry.[52] Even the courts have refused to decide work-assignment disputes, claiming that congressional passage of the RLA to deal with labor

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[45] Transportation-Communication Employees Union v. Union Pac. R.R., 385 U.S. 157 (1966).

[46] Id. The Court held the form letter which the union had sent would not prevent an adjudication of its rights at the hearing.

[47] 29 U.S.C. § 160(k) (1964). The NLRB has power to decide a work-assignment dispute when the regional director has reason to believe that a union is attempting to induce a strike in order to compel assignment of the work to its members. Daykin, Jurisdictional Disputes Under the NLRB, 24 Fordham L. Rev. 597, 602 (1956). In contrast, under the RLA, one of the parties must petition the Railroad Adjustment Board before it has authority to act. RLA § 3, First (i), 45 U.S.C. § 153, First (i) (1964).

[48] RLA § 204, 45 U.S.C. § 184 (1964).

[49] Letter from an airline executive, Oct. 12, 1967.

[50] See RLA § 201, 45 U.S.C. § 181 (1964), where the provisions of the railway act are made applicable to the airline industry with the exception of § 3, 45 U.S.C. § 153, which establishes a National Railroad Adjustment Board.

[51] 29 U.S.C. § 160(k) (1964).

[52] Id. § 182.

disputes has removed such matters from judicial determination.[53] The result for the airline industry has been a complete inability to cope with tripartite disputes, disputes which are readily settled in all other industries.

The inability of the single-union adjustment board to resolve tripartite airline disputes has been most apparent in connection with the crew-complement controversy between the Pilots Association and the Flight Engineers Association. During the past decade, crew-complement disputes in their various forms have produced 13 airline strikes totaling 510 days lost.[54] In 1961, when these disputes shut down eight airlines, they accounted for 42 percent of the work days lost due to strikes in the airline industry.[55] Crew-complement disputes are those concerning the selection and the qualifications of the third person in the airplane cabin. The pilots wanted the man to be a pilot-qualified engineer; the flight engineers wanted a mechanic-qualified engineer.[56] Each union sought to include provisions to achieve its end in its collective-bargaining agreement. Because airline unions held a strong bargaining position in contract negotiations due to the service nature of the industry, a factor which prevented the stockpiling of goods,[57] the carrier, in order to prevent a strike which would result in a complete loss of income usually assented to the inclusion of the desired clause. If both unions used this tactic, the carrier was faced with two conflicting claims for the particular job, each supported by a contract provision. When the carrier decided on the qualifications for the position, a decision which necessarily violated the contract of one of the two unions, the aggrieved union brought the disputed contract provisions to its contractually created adjustment board. The adjustment board interpreted the express lanuage of the contract without regard to extrinsic evidence, such as the other union's contract. If successful before the adjustment board, the union would seek court enforcement.

Court enforcement of adjustment board decisions was generally quite difficult. The courts have felt that the awards, made without consideration of the second union's position, were unfair to that union and could not be enforced to the second union's detriment.[58] The courts, however, have been unable to remedy the situation by readjudication of the issues because a recent amendment of the RLA makes the board's findings conclusive between the

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[53] E.g., Flight Eng'rs Int'l Ass'n v. Eastern Air Lines, Inc., 311 F.2d 745 (2d Cir. 1963). This judicial position was also applied to railroad disputes before board resolution was made mandatory. Slocum v. Delaware L. & W.R.R., 339 U.S. 239, 244 (1950).

[54] Statement by Everett M. Goulard before the Special Committee on National Strikes in the Transportation Industries of the American Bar Association 27 (May 5, 1967).

[55] See 27 National Mediation Board Ann. Rep. 85 (1961).

[56] Henzey, Labor Problems in the Airline Industry, 25 Law & Contemp. Prob. 43, 46-47 (1960). The pilots union based its claim upon the necessity of pilot training for everyone in the cabin to enable anyone to operate the airplane should the need arise. The flight engineers felt this was a cover for a work-assignment dispute, that the pilots union wanted to fill the position with their pilot-trained members, and feared that this was the first step toward an eventual takeover by the larger pilots union. See Blum, Fourth Man Out—Background of the Flight Engineer—Airline Pilot Conflict, 13 Labor L.J. 649, 651 (1962).

[57] Goulard, supra note 54, at 17.

[58] E.g., Ruby v. Pan Am. World Airways, Inc., 252 F. Supp. 393 (S.D.N.Y. 1966).

parties[59] and allows the reviewing court only to choose between accepting the board's decision, setting it aside or remanding.[60] Thus the courts are not able to achieve a fair solution for all the parties, and the RLA remains ineffective to cope with airline work-assignment disputes.

III. Some Alternative Procedures

There are several possible methods by which the present procedures for handling work-assignment disputes could be improved. Although each possibility offers a considerable number of advantages over the present system, each has such serious drawbacks as to make both unions and carriers reluctant to change from the present system. Since the RLA does not provide for solution of tripartite airline disputes, any solution must be accomplished through private agreement of the parties or by changing the machinery of the act.

Voluntary arbitration could be used to resolve work-assignment disputes and at the same time avoid many of the difficulties accompanying the Railroad Adjustment Board procedures.[61] This tripartite arbitration might be accomplished by having each party select an arbitration representative, and then allowing these reprensentatives to operate as a special adjustment board with regular adjustment board procedures.

The unions and carriers will not assent to such a solution, however, because a combination of any two of the parties could defeat the interests of the third. If the carrier sides with one of the unions, the carrier would be insulated from incurring double liability, a result which the unions feel is unfair because the carrier agreed to each contract and thereby gained bargaining advantages when the contract was negotiated. Conversely, the carrier fears the unions may collaborate and decide that the contract provision in each union's agreement is valid, thus requiring the carrier to pay two workers for one job.[62] For these reasons it is unlikely that arbitration will serve as a solution. Alternately, attempts at private mediation between the parties have been made in the past with little success,[63] since there can be no solution acceptable to all the parties to a dispute. Thus, in spite of the continued availability of voluntary solution to work-assignment disputes, it has seldom been successfully used.

Since voluntary solution to this problem is unlikely, some change in the

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[59] RLA §§ 3, First (p), (q), 45 U.S.C. §§ 153, First (p), (q) (Supp. II 1965-66). The procedural aspects of this section have been held to be applicable to airline disputes. Gordon v. Eastern Air Lines, Inc., 268 F. Supp. 210 (W.D. Va. 1967).

[60] RLA §§ 3, First (p), (q), 45 U.S.C. §§ 153, First (p), (q) (Supp. II 1965-66). The courts' power to remand or set aside the order or award of the Adjustment Board is limited to situations in which there is a failure of the division to comply with the statute, an exercise of Board power in excess of jurisdiction, or for fraud or corruption of a division member. Id.

[61] Some of the difficulties for railroads have involved conflicts over which division of the National Railroad Adjustment Board will decide a particular dispute. In cases where the unions belong to different divisions, selection of the division to hear the dispute will be determinative. Other problems with RLA tripartite railroad procedure involve unions which are not national in scope or which are national but not personally represented by a member on the board.

[62] Henzey, supra note 56, at 46.

[63] Goulard, supra note 54, at 26.

procedural machinery appears to be necessary. The change which would be least difficult to effect has been provided by the Act itself,[64] for the National Mediation Board may, when it deems necessary, establish a permanent National Air Transport Adjustment Board, which would have the same authority and powers as the National Railroad Adjustment Board.[65] The Air Transport Adjustment Board would consist of an equal number of representatives chosen by both the air carriers and the national unions.[66] With each union taking part in the selection of board members, the problem incurred by the present, single-union adjustment boards in resolving multiparty disputes would be eliminated. To date the Mediation Board has felt neither a need nor a demand for the establishment of an Air Transport Adjustment Board.[67] The Mediation Board has felt that such an adjustment board is unnecessary because of the effectiveness of existing airline adjustment boards, which except for work-assignment disputes have worked well.[68] Both the unions and the carriers are also generally pleased with the way adjustment boards have handled "minor" disputes.[69] In addition, until the recent Supreme Court decision requiring resolution of railroad work-assignment disputes in a single proceeding, there was no reason for the Mediation Board to believe that an Air Transport Adjustment Board could function any more effectively than did the National Railroad Adjustment Board when dealing with such disputes. In light of this decision, however, an Air Transport Adjustment Board should be able to resolve tripartite airline disputes.

When the RLA was first made applicable to the airline industry, only the pilots were formally organized.[70] Under those conditions, where there was little national union organization, a National Air Transport Adjustment Board, as allowed by the present statute, would have been absurd. For this reason, when Congress extended the RLA in 1936 to include the airline industry, it must have felt it inappropriate to apply the same adjustment-board structure that it had created for the railroad industry, in which the labor unions were already organized,[71] to the airline industry. Thus the provision creating a national adjustment board for the railroad industry was omitted for the airline industry.[72] At present, although the number of unions in the airline industry is

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64 RLA § 205, 45 U.S.C. § 185 (1964).

65 Id.

66 There is a difference in the number of members between the railroad and airline national boards. While the National Railroad Adjustment Board has 36 members, the National Air Transport Adjustment Board would have only four members, two selected by the carriers and two by the national unions. Id.

67 National Mediation Board, Administration of the Railway Labor Act by the National Mediation Board 1934-1957, at 29 (1958).

68 Letter from Howard G. Gamser, Chairman, National Mediation Board, Oct. 6, 1967.

69 Id.

70 Henzey, supra note 56, at 44.

71 In the railroad industry, the nationalization and centralization of unions occurred during World War I, before the RLA was enacted. This early organization facilitated the creation of the National Railroad Adjustment Board. See Garrison, The National Railroad Adjustment Board: A Unique Administrative Agency, 46 Yale L.J. 567, 570 (1937).

72 See authorities cited note 50 supra.

relatively small, the labor organization of the airline industry is conducive to a national board.

Many disadvantages would accompany the formation of a National Air Transport Adjustment Board. Such a board would take over the functions now performed by the decentralized airline adjustment boards and incorporate many of the flaws inherent in the centralized National Railroad Adjustment Board. Perhaps the foremost flaw which would be incorporated is the delay factor inherent in referring all "minor" disputes to a single administrative body. Much of the benefit in having many airline adjustment boards has been their speed in resolving disputes on those matters where they have been able to function. Long delays before a hearing by these single-union boards are unlikely because their jurisdiction is limited to disputes between one union and one carrier. With the replacement of these many boards by a single national board, a backlog of cases is almost certain to result.

In the railroad industry, the National Railroad Adjustment Board has been faced with so many disputes that long delays occur before any hearing can be held. This delay problem in the railroad industry has led to amendment of the RLA to allow railroad unions faced with Railroad Adjustment Board delays to compel the carrier to create special adjustment boards to lessen the National Board's workload.[73] Prior to this amendment mutual consent was needed to create such a special board,[74] and the carriers felt a delay was to their advantage. In the airline industry, if the National Air Transport Adjustment Board were created, either party to the existing two-party board might prevent continuation of that board by electing to come under the jurisdiction of the National Board.[75] This RLA provision would lead to delays in the airline industry which the recently adopted amendments were intended to prevent in the railroad industry.[76] Since the airline industry provisions were left intact, the railroad amendment will have no effect on lessening the Air Transport Adjustment Board workload if such a board is created.

Furthermore, the National Air Transport Adjustment Board, like the Railroad Adjustment Board, would be unable to deal with the problems created by a dispute involving a union which is not national in scope. Although these unions may bring disputes before the National Board, they are unwilling to do so because they do not take part in the selection of Board members. They feel that submission of a dispute to a board on which only the carriers and national unions is represented would be disadvantageous to their position.[77] For this reason, local unions have avoided submitting disputes to a national adjustment board.

Although the airline industry's present boards have worked well for one-union disputes, the work-assignment problem is grave enough to require structural changes. A possible compromise between the status quo and a national

[73] RLA § 3, Second, 45 U.S.C. § 153, Second (Supp. II 1965-66).

[74] Act of June 21, 1934, ch. 691, § 3, Second, 48 Stat. 1189.

[75] RLA § 205, 45 U.S.C. § 185 (1964).

[76] Compare RLA § 3, Second, 45 U.S.C. § 153, Second (Supp. II 1965-66), with RLA § 205, 45 U.S.C. § 185 (1964).

[77] These local unions have often been involved in jurisdictional conflicts with the national unions, and fear that the national unions' board members would not be sympathetic to their claim.

adjustment board might be reached by limiting that board's jurisdiction to tripartite disputes, thereby retaining the present structure for all other disputes. This type of modification, however, requires legislation to give it effect, while an Air Transport Adjustment Board with complete jurisdiction requires no new legislation.[78] Such a change also fails to eliminate problems created by disputes involving unions less than national in scope.

Another possible solution to the problem of tripartite airline disputes would be to place airlines under the authority of the NLRB by making the Railway Labor Act inapplicable to the airline industry. The NLRB resolves work-assignment disputes by deciding which party is entitled to the position without allowing either party to strike over this type of dispute.[79] Compulsory settlement by the NLRB is commonly used in other industries,[80] and there is no reason to believe that application of NLRB procedures to the airline industry could not resolve its work-assignment disputes.[81] Under the NLRB, however, there are no procedures for compulsory settlement of two-party "minor" disputes, and such disputes often cause strikes in NLRB industries. Placing the airline industry under the NLRB would remove RLA compulsion, and a strike over any "minor" dispute could occur, with resulting serious effect on commerce. For this reason, in spite of the desirability of having work-assignment disputes resolved by the NLRB, the over-all effect of shifting supervision of labor relations in the airline industry to the NLRB would not be in the best interests of commerce. All the alternatives suggested would help to alleviate the problems involved with work-assignment disputes, yet each would, by its very nature sacrifice valuable assets of present RLA procedure. Resolution of this impasse could be reached by absorbing, through amendment, the more desireable features of the various alternatives into the RLA structure.

IV. Conclusion

Since NLRB *procedures* have been so effective in handling work-assignment disputes, it is submitted that incorporation of similar work-assignment provisions into the RLA structure for the airline industry would be the most effective solution to work-assignment disputes. By incorporation of this provision, solution of tripartite airline conflicts could be compelled, and the compulsory settlement provisions of the RLA for other "minor" disputes could be retained. Avoidance of adjustment board delay would demand assignment of the decision-making machinery for tripartite disputes to an impartial board for resolution. The National Mediation Board seems to be the agency best equipped to resolve tripartite disputes. First, it is already in operation and has authority to resolve multi-union disputes when they involve representational issues. Second, it has the expertise to deal with specialized airline problems which would be lost if the NLRB were used. The membership of the Mediation Board is similar to that of the NLRB, since both boards are appointed by the President and not by the parties involved in the dispute. With

[78] RLA § 205, 45 U.S.C. § 185 (1964).

[79] See note 47 supra.

[80] Carey v. Westinghouse Elec. Corp., 375 U.S. 261, 265 (1964).

[81] See MacIntyre, The Railway Labor Act—A Misfit for the Airlines, 19 J. Air L. & Com. 274, 288 (1952).

this composition, the board members would not be acting out of self-interest in making their decisions.

Furthermore, since the members of the Mediation Board are not selected by any involved party, the Board could resolve tripartite disputes involving unions not national in scope. Any objection by the Mediation Board to this increase in its workload could easily be overcome by increasing the size of its staff, since the RLA provides that the Board may assign some of its work to single members or to employees.[82] If more desirable, additional members may be added. Use of the Mediation Board will thus eliminate many of the difficulties encountered by railroads in using the Railroad Adjustment Board, and at the same time will fulfill the purpose of the RLA by resolving all tripartite airline disputes.

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[82] RLA § 4, Fourth, 45 U.S.C. § 154, Fourth (1964).